

Assembly Bill No. 329

CHAPTER 398

An act to amend Sections 51930, 51931, 51932, 51933, 51934, 51935, 51936, 51937, 51938, and 51939 of, to amend the heading of Article 2 (commencing with Section 51933) of Chapter 5.6 of, to amend the heading of Chapter 5.6 (commencing with Section 51930) of, to amend and renumber the heading of Article 4 (commencing with Section 51935) of Chapter 5.6 of, to amend and renumber the heading of Article 5 (commencing with Section 51937) of Chapter 5.6 of, and to repeal the heading of Article 3 (commencing with Section 51934) of Chapter 5.6 of, Part 28 of Division 4 of Title 2 of, the Education Code, relating to pupil instruction.

[Approved by Governor October 1, 2015. Filed with
Secretary of State October 1, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 329, Weber. Pupil instruction: sexual health education.

(1) Existing law, the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act, authorizes school districts to provide comprehensive sexual health education, consisting of age-appropriate instruction, in any of kindergarten and grades 1 to 12, inclusive, and requires school districts to ensure that all pupils in grades 7 to 12, inclusive, receive HIV/AIDS prevention education, as specified.

This bill would revise and recast these provisions to, among other things, integrate the instruction of comprehensive sexual health education and HIV prevention education. The bill would rename the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act the California Healthy Youth Act. The bill would specify additional purposes of the act. The bill would instead require school districts to ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education, as specified. By imposing additional requirements on school districts, this bill would impose a state-mandated local program.

(2) Existing law provides that these provisions do not apply to description or illustration of human reproductive organs in certain textbooks, or to instruction or materials that discuss gender, sexual orientation, or family life and do not discuss human reproductive organs and their functions.

This bill would revise the types of textbooks, instructions, and materials for which those provisions are inapplicable.

(3) This bill would also make conforming changes.

(4) This bill would incorporate additional changes to Section 51938 of the Education Code proposed by AB 517 that would become operative if this bill and AB 517 are both enacted and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 5.6 (commencing with Section 51930) of Part 28 of Division 4 of Title 2 of the Education Code is amended to read:

CHAPTER 5.6. CALIFORNIA HEALTHY YOUTH ACT

SEC. 2. Section 51930 of the Education Code is amended to read:

51930. (a) This chapter shall be known, and may be cited, as the California Healthy Youth Act.

(b) The purposes of this chapter are as follows:

(1) To provide pupils with the knowledge and skills necessary to protect their sexual and reproductive health from HIV and other sexually transmitted infections and from unintended pregnancy.

(2) To provide pupils with the knowledge and skills they need to develop healthy attitudes concerning adolescent growth and development, body image, gender, sexual orientation, relationships, marriage, and family.

(3) To promote understanding of sexuality as a normal part of human development.

(4) To ensure pupils receive integrated, comprehensive, accurate, and unbiased sexual health and HIV prevention instruction and provide educators with clear tools and guidance to accomplish that end.

(5) To provide pupils with the knowledge and skills necessary to have healthy, positive, and safe relationships and behaviors.

SEC. 3. Section 51931 of the Education Code is amended to read:

51931. For the purposes of this chapter, the following definitions apply:

(a) “Age appropriate” refers to topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(b) “Comprehensive sexual health education” means education regarding human development and sexuality, including education on pregnancy, contraception, and sexually transmitted infections.

(c) “English learner” means a pupil as described in subdivision (a) of Section 306.

(d) “HIV prevention education” means instruction on the nature of human immunodeficiency virus (HIV) and AIDS, methods of transmission,

strategies to reduce the risk of HIV infection, and social and public health issues related to HIV and AIDS.

(e) “Instructors trained in the appropriate courses” means instructors with knowledge of the most recent medically accurate research on human sexuality, healthy relationships, pregnancy, and HIV and other sexually transmitted infections.

(f) “Medically accurate” means verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

(g) “School district” includes county boards of education, county superintendents of schools, the California School for the Deaf, and the California School for the Blind.

SEC. 4. Section 51932 of the Education Code is amended to read:

51932. (a) This chapter does not apply to description or illustration of human reproductive organs that may appear in a textbook, adopted pursuant to law, if the textbook does not include other elements of comprehensive sexual health education or HIV prevention education as defined in Section 51931.

(b) This chapter does not apply to instruction, materials, presentations, or programming that discuss gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family and do not discuss human reproductive organs and their functions.

SEC. 5. The heading of Article 2 (commencing with Section 51933) of Chapter 5.6 of Part 28 of Division 4 of Title 2 of the Education Code is amended to read:

Article 2. Required Comprehensive Sexual Health Education and HIV Prevention Education

SEC. 6. Section 51933 of the Education Code is amended to read:

51933. All comprehensive sexual health education and HIV prevention education pursuant to Section 51934, whether taught or supplemented by school district personnel or by outside consultants or guest speakers pursuant to Section 51936, shall satisfy all of the following criteria:

(a) Instruction and materials shall be age appropriate.

(b) All factual information presented shall be medically accurate and objective.

(c) All instruction and materials shall align with and support the purposes of this chapter as set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 51930 and may not be in conflict with them.

(d) (1) Instruction and materials shall be appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners.

(2) Instruction and materials shall be made available on an equal basis to a pupil who is an English learner, consistent with the existing curriculum and alternative options for an English learner pupil as otherwise provided in this code.

(3) Instruction and materials shall be accessible to pupils with disabilities, including, but not limited to, the provision of a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.

(4) Instruction and materials shall not reflect or promote bias against any person on the basis of any category protected by Section 220.

(5) Instruction and materials shall affirmatively recognize that people have different sexual orientations and, when discussing or providing examples of relationships and couples, shall be inclusive of same-sex relationships.

(6) Instruction and materials shall teach pupils about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes.

(e) Instruction and materials shall encourage a pupil to communicate with his or her parents, guardians, and other trusted adults about human sexuality and provide the knowledge and skills necessary to do so.

(f) Instruction and materials shall teach the value of and prepare pupils to have and maintain committed relationships such as marriage.

(g) Instruction and materials shall provide pupils with knowledge and skills they need to form healthy relationships that are based on mutual respect and affection, and are free from violence, coercion, and intimidation.

(h) Instruction and materials shall provide pupils with knowledge and skills for making and implementing healthy decisions about sexuality, including negotiation and refusal skills to assist pupils in overcoming peer pressure and using effective decisionmaking skills to avoid high-risk activities.

(i) Instruction and materials may not teach or promote religious doctrine.

SEC. 7. The heading of Article 3 (commencing with Section 51934) of Chapter 5.6 of Part 28 of Division 4 of Title 2 of the Education Code is repealed.

SEC. 8. Section 51934 of the Education Code is amended to read:

51934. (a) Each school district shall ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school. This instruction shall include all of the following:

(1) Information on the nature of HIV, as well as other sexually transmitted infections, and their effects on the human body.

(2) Information on the manner in which HIV and other sexually transmitted infections are and are not transmitted, including information on

the relative risk of infection according to specific behaviors, including sexual activities and injection drug use.

(3) Information that abstinence from sexual activity and injection drug use is the only certain way to prevent HIV and other sexually transmitted infections and abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy. Instruction shall provide information about the value of delaying sexual activity while also providing medically accurate information on other methods of preventing HIV and other sexually transmitted infections and pregnancy.

(4) Information about the effectiveness and safety of all federal Food and Drug Administration (FDA) approved methods that prevent or reduce the risk of contracting HIV and other sexually transmitted infections, including use of antiretroviral medication, consistent with the federal Centers for Disease Control and Prevention.

(5) Information about the effectiveness and safety of reducing the risk of HIV transmission as a result of injection drug use by decreasing needle use and needle sharing.

(6) Information about the treatment of HIV and other sexually transmitted infections, including how antiretroviral therapy can dramatically prolong the lives of many people living with HIV and reduce the likelihood of transmitting HIV to others.

(7) Discussion about social views on HIV and AIDS, including addressing unfounded stereotypes and myths regarding HIV and AIDS and people living with HIV. This instruction shall emphasize that successfully treated HIV-positive individuals have a normal life expectancy, all people are at some risk of contracting HIV, and the only way to know if one is HIV-positive is to get tested.

(8) Information about local resources, how to access local resources, and pupils' legal rights to access local resources for sexual and reproductive health care such as testing and medical care for HIV and other sexually transmitted infections and pregnancy prevention and care, as well as local resources for assistance with sexual assault and intimate partner violence.

(9) Information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception. Instruction on pregnancy shall include an objective discussion of all legally available pregnancy outcomes, including, but not limited to, all of the following:

(A) Parenting, adoption, and abortion.

(B) Information on the law on surrendering physical custody of a minor child 72 hours of age or younger, pursuant to Section 1255.7 of the Health and Safety Code and Section 271.5 of the Penal Code.

(C) The importance of prenatal care.

(10) Information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.

(b) A school district may provide comprehensive sexual health education or HIV prevention education consisting of age-appropriate instruction earlier than grade 7 using instructors trained in the appropriate courses. A school

district that elects to offer comprehensive sexual health education or HIV prevention education earlier than grade 7 may provide age appropriate and medically accurate information on any of the general topics contained in paragraphs (1) to (10), inclusive, of subdivision (a).

SEC. 9. The heading of Article 4 (commencing with Section 51935) of Chapter 5.6 of Part 28 of Division 4 of Title 2 of the Education Code is amended and renumbered to read:

Article 3. In-Service Training

SEC. 10. Section 51935 of the Education Code is amended to read:

51935. (a) A school district shall cooperatively plan and conduct in-service training for all school district personnel that provide HIV prevention education, through regional planning, joint powers agreements, or contract services.

(b) In developing and providing in-service training, a school district shall cooperate and collaborate with the teachers of the district who provide HIV prevention education and with the department.

(c) In-service training shall be conducted periodically to enable school district personnel to learn new developments in the scientific understanding of HIV. In-service training shall be voluntary for school district personnel who have demonstrated expertise or received in-service training from the department or federal Centers for Disease Control and Prevention.

(d) A school district may expand HIV in-service training to cover the topic of comprehensive sexual health education in order for school district personnel who provide comprehensive sexual health education to learn new developments in the scientific understanding of sexual health.

SEC. 11. Section 51936 of the Education Code is amended to read:

51936. School districts may contract with outside consultants or guest speakers, including those who have developed multilingual curricula or curricula accessible to persons with disabilities, to deliver comprehensive sexual health education and HIV prevention education or to provide training for school district personnel. All outside consultants and guest speakers shall have expertise in comprehensive sexual health education and HIV prevention education and have knowledge of the most recent medically accurate research on the relevant topic or topics covered in their instruction.

SEC. 12. The heading of Article 5 (commencing with Section 51937) of Chapter 5.6 of Part 28 of Division 4 of Title 2 of the Education Code is amended and renumbered to read:

Article 4. Notice and Parental Excuse

SEC. 13. Section 51937 of the Education Code is amended to read:

51937. It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and HIV and to respect the rights of parents or guardians to supervise their

children's education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children.

SEC. 14. Section 51938 of the Education Code is amended to read:

51938. (a) A parent or guardian of a pupil has the right to excuse their child from all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education through a passive consent ("opt-out") process. A school district shall not require active parental consent ("opt-in") for comprehensive sexual health education and HIV prevention education.

(b) At the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, each school district shall notify the parent or guardian of each pupil about instruction in comprehensive sexual health education and HIV prevention education and research on pupil health behaviors and risks planned for the coming year. The notice shall do all of the following:

(1) Advise the parent or guardian that written and audiovisual educational materials used in comprehensive sexual health education and HIV prevention education are available for inspection.

(2) Advise the parent or guardian whether the comprehensive sexual health education or HIV prevention education will be taught by school district personnel or by outside consultants. A school district may provide comprehensive sexual health education or HIV prevention education, to be taught by outside consultants, and may hold an assembly to deliver comprehensive sexual health education or HIV prevention education by guest speakers, but if it elects to provide comprehensive sexual health education or HIV prevention education in either of these manners, the notice shall include the date of the instruction, the name of the organization or affiliation of each guest speaker, and information stating the right of the parent or guardian to request a copy of this section, Section 51933, and Section 51934. If arrangements for this instruction are made after the beginning of the school year, notice shall be made by mail or another commonly used method of notification, no fewer than 14 days before the instruction is delivered.

(3) Include information explaining the parent's or guardian's right to request a copy of this chapter.

(4) Advise the parent or guardian that the parent or guardian has the right to excuse their child from comprehensive sexual health education and HIV prevention education and that in order to excuse their child they must state their request in writing to the school district.

(c) Notwithstanding Section 51513, anonymous, voluntary, and confidential research and evaluation tools to measure pupils' health behaviors and risks, including tests, questionnaires, and surveys containing age-appropriate questions about the pupil's attitudes concerning or practices relating to sex, may be administered to any pupil in grades 7 to 12, inclusive. A parent or guardian has the right to excuse their child from the test, questionnaire, or survey through a passive consent ("opt-out") process. A school district shall not require active parental consent ("opt-in") for these tests, questionnaires, or surveys in grades 7 to 12, inclusive. Parents or guardians shall be notified in writing that this test, questionnaire, or survey is to be administered, given the opportunity to review the test, questionnaire, or survey if they wish, notified of their right to excuse their child from the test, questionnaire, or survey, and informed that in order to excuse their child they must state their request in writing to the school district.

(d) The use of outside consultants or guest speakers as described in paragraph (2) of subdivision (b) is within the discretion of the school district.

SEC. 14.5. Section 51938 of the Education Code is amended to read:

51938. (a) A parent or guardian of a pupil has the right to excuse his or her child from all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education through a passive consent ("opt-out") process. A school district shall not require active parental consent ("opt-in") for comprehensive sexual health education and HIV prevention education.

(b) At the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, each school district shall notify the parent or guardian of each pupil about instruction in comprehensive sexual health education and HIV prevention education and research on pupil health behaviors and risks planned for the coming year. The notice shall do all of the following:

(1) Advise the parent or guardian that written and audiovisual educational materials used in comprehensive sexual health education and HIV prevention education are available for inspection and that during this inspection a parent or guardian may make copies at the parent's or guardian's pupil's school of any written educational material that will be distributed to pupils, if it is not copyrighted and has been or will be presented by an outside consultant or guest speaker.

(2) Advise the parent or guardian whether the comprehensive sexual health education or HIV prevention education will be taught by school district personnel or by outside consultants. A school district may provide comprehensive sexual health education or HIV prevention education, to be taught by outside consultants, or may hold an assembly to deliver comprehensive sexual health education or HIV prevention education by guest speakers, but if the school district elects to provide comprehensive sexual health education or HIV prevention education in either of these manners, the notice shall include the date of the instruction, the name of the organization or affiliation of each outside consultant and guest speaker, the training in comprehensive sexual health education and HIV prevention

education of each outside consultant and guest speaker, and information stating the right of the parent or guardian to request a copy of this section, Section 51933, and Section 51934. If arrangements for this instruction are made after the beginning of the school year, notice shall be made by mail or another commonly used method of notification, no fewer than 14 days before the instruction is delivered.

(3) Include information explaining the parent's or guardian's right to request a copy of this chapter.

(4) Advise the parent or guardian that the parent or guardian has the right to excuse their child from comprehensive sexual health education and HIV prevention education and that in order to excuse their child they must state their request in writing to the school district.

(c) A school district shall allow a pupil's parent or guardian to inspect any written or audiovisual educational material used in comprehensive sexual health education and HIV prevention education. A parent or guardian may, during inspection, make copies at the parent's or guardian's pupil's school of any written educational material that will be distributed to pupils, if it is not copyrighted and has been or will be presented by an outside consultant or guest speaker. If a parent or guardian elects to make copies, the school may charge up to ten cents (\$0.10) per page.

(d) Notwithstanding Section 51513, anonymous, voluntary, and confidential research and evaluation tools to measure pupils' health behaviors and risks, including tests, questionnaires, and surveys containing age-appropriate questions about the pupil's attitudes concerning or practices relating to sex, may be administered to any pupil in grades 7 to 12, inclusive. A parent or guardian has the right to excuse their child from the test, questionnaire, or survey through a passive consent ("opt-out") process. A school district shall not require active parental consent ("opt-in") for these tests, questionnaires, or surveys in grades 7 to 12, inclusive. Parents or guardians shall be notified in writing that this test, questionnaire, or survey is to be administered, given the opportunity to review the test, questionnaire, or survey if they wish, notified of their right to excuse their child from the test, questionnaire, or survey, and informed that in order to excuse their child they must state their request in writing to the school district.

(e) The use of outside consultants or guest speakers as described in paragraph (2) of subdivision (b) is within the discretion of the school district.

SEC. 15. Section 51939 of the Education Code is amended to read:

51939. (a) A pupil may not attend any class in comprehensive sexual health education or HIV prevention education, or participate in any anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.

(b) A pupil may not be subject to disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive comprehensive sexual health education or HIV prevention education or to participate in anonymous, voluntary, and confidential tests, questionnaires, or surveys on pupil health behaviors and risks.

(c) While comprehensive sexual health education, HIV prevention education, or anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks is being administered, an alternative educational activity shall be made available to pupils whose parents or guardians have requested that they not receive the instruction or participate in the test, questionnaire, or survey.

SEC. 16. Section 14.5 of this bill incorporates amendments to Section 51938 of the Education Code proposed by both this bill and Assembly Bill 517. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 51938 of the Education Code, and (3) this bill is enacted after Assembly Bill 517, in which case Section 14 of this bill shall not become operative.

SEC. 17. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.